

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

(15)

Original Application No.2491 of 2002

New Delhi, this the 10th day of October, 2003

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

Shri Surendra Nath
Additional Secretary,
Department of Justice,
Government of India,
New Delhi.Applicant

By Advocate: Shri Jagjit Singh.

Versus

1. Union of India
Through Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
2. Secretary,
Department of Personnel,
Government of India,
North Block,
New Delhi.
3. Home Secretary,
Secretary (Justice)
Government of India,
North Block,
New Delhi.
4. Mr. N.K. Narad
Special Secretary,
Ministry of Petroleum and Natural
Gas,
Room No.208 (2nd Floor), Shastri Bhawan,
New Delhi. Respondents
5. Dr.V.K. Agnihotri
Officer on Special Duty,
Twelfth Finance Commission,
3rd Floor, Lok Nayak Bhavan,
Room No.301, New Delhi.

By Advocate: Sh. K.R. Sachdeva,

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

The applicant has filed this OA under Section 19 of the AT Act as he is aggrieved of the fact that his Annual Confidential Reports for the years 2000-01 and 2001-02 have been written contrary to All India Services



(Roll) Rules, 1970 framed under the All India Services Act, 1951.

2. The facts in brief are that the applicant is a 1968 batch IAS officer and presently he is working as Additional Secretary to the Government of India.

3. The applicant further alleges that the ACRs of the applicant for the period 2000-01 and 2001-02 have been written with a view to victimise the applicant at the hands of the higher authorities in order to prevent the promotion of the applicant and to favour their own persons.

4. The applicant further alleges that after he was posted as Additional Secretary in the Department of Justice on 9.3.2000 the applicant had taken various initiatives and started new schemes, new projects, worked out Action Plans etc. for improving the administration of justice so that delays in judicial process are minimized.

5. He has also highlighted that he was effectively associated with various projects and particularly setting up of fast track courts for the expeditious trial of the long pending Sessions cases and pilot project of computerisation and networking of city courts in the four major metros as well as the networking of the Department of Justice with the High Courts and the Law Departments.

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6. Similarly he was also associated with the new plan scheme for High Courts approved by the Planning Commission for the Tenth Plan.

7. He has also launched a drive to fill more than 2000 vacant posts in the district/subordinate courts and setting up of family courts etc.

8. He was also instrumental for higher allocation of funds and releases made by the department of justice. The steps and initiatives taken up by the applicant had been mentioned in the Publication of Ministry of Law and Justice and Company Affairs and started his career as Assistant Collector. The applicant had worked on various posts such as Assistant Collector, Collector, Director, Commissioner/Joint Secretary to the Government of India and Additional Secretary to the Government of India and his work and performance has been appreciated at all the levels.

9. The applicant further alleges that at the time when he joined as Additional Secretary to the Department of Justice, he apprehended that he would be victimised if he worked under Mr. Kamal Pandey, who is the batch-mate of the applicant's both elder brothers Mr. Dharmendra Nath and Mr. Virendra Nath whereas respondent No.3 was in the IAS.

10. It is further stated that the apprehension of the applicant came true as on the very next day when he joined the post of Additional Secretary for the reasons best known to respondent No.3, drastic changes were made

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in the scope of responsibilities and level of the responsibility of the applicant. A large number of responsibilities and work had been withdrawn from the applicant.

11. Thus the scope of responsibilities of the applicant were curtailed and certain facilities were also withdrawn from the applicant so much so the applicant was not allowed to report to the concerned Minister directly. However, the said Secretary had also been delegating most of his important responsibilities including attending the Cabinet meeting and Committee of Secretaries meeting and appearance before the Department related Parliamentary Standing Committee and the record of these instances would support the allegation of the applicant and, in fact, the initiatives taken by the applicant were recognised by various dignitaries.

12. It is further stated that initiatives taken by the applicant were reported to the Secretary from time to time and were also brought to his notice through self-assessment reports dated 14.6.2001 submitted in his ACR for 2000-01 and report dated 19.4.2002 in his assessment year for 2001-02 was written. But it appears that the same has been missed by the Reporting Authority because of his extreme preoccupation as Secretary (Home). Though the level of performance of the applicant had been improving but the applicant has come to know that he has been given 'Average' grade in the ACR for the year 2001-02 and 'Very Good' for the year 2000-01.

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13. It was further stated that the applicant was shocked when he came to know of this because his consistent Bench Mark for the past decade has been mostly outstanding and he has not only achieved various targets and goals during his tenure as Additional Secretary but taken a large number of new initiatives and started new projects.

14. It is further submitted that since selection was to be held for promotion to the post of Secretary from Additional Secretary and his both ACRs were to be considered but the same had been written contrary to the rules and instructions, therefore, the applicant made a detailed representation and brought to the notice of the concerned authorities about his initiatives taken by him during his tenure as Additional Secretary and in his representation he had also requested the authorities that grading as "Average" in the ACR for 2000-01 may not be seen for the purpose of selection to the post of Secretary as the performance of the applicant including self-appraisal have not been taken into account by the reporting authority.

15. Even otherwise the ACR in question is contrary to the law against statutory instructions being illegal void ab initio and the same may not be taken into account for the post of promotion etc. It appears that his representation had been rejected.



16. The applicant further alleges that his juniors, namely, Shri N.K. Narad and Dr.V.K. Agnihotri who were juniors to him have been promoted to the post of Secretary and few others who are junior to him have also been empanelled to the post of Secretary.

17. In order to challenge the recording of ACRs it is submitted that the ACRs of an officer belonging to All India Services are governed by All India Services (Confidential Rolls) Rules, 1970. It is also submitted that the CR Rules had been framed under All India Services Act, 1951. It is further submitted that the ACR Proforma meant for above Supertime Scale officers has also been prescribed under Rule 4 of the said CR Rules.

18. It is further provided that the CR Rules also provide review of the remarks of the Reporting Authority under Rule 6 of the CR Rules and the purpose of the review is to independently assess the performance and the capabilities of an officer on the basis of the relevant material but since the ACRs have been written contrary to the rules and instructions so it should be declared that ACRs are null and void and cannot be considered or kept on record for any purpose including promotion.

19. It is further stated that the reporting authorities comments in the ACR for the year 2001-02 are full of contradictions because on the one hand the reporting authority had mentioned that officer is a knowledgeable and experienced officer and his work in the department is satisfactory but while assessing him he has assessed him as 'average' without making any comment

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about his personality attributes. Thus the ACRs are written contrary to the rules which require mention about various attributes like communication skills, leadership qualities, willingness to take responsibilities his performance or the initiatives taken by him as prescribed in the statutory format.

20. Similarly the general assessment has not been stated in the narrative form rather the entires in the ACR are omnibus, cryptic ambiguous and against rules/instructions.

21. It is further stated that the Reporting Officer should write the ACR entry within 2 months of the close of the financial year and a date has been specified for the purpose, namely, by the 31st May of the year.

22. It is further stated that the ACR for the year 2000-01 has been reviewed by an authority who has not seen the applicant's work nor applicant was reporting him. The reviewing authority of the applicant is Minister of Law, Justice and Company Affairs to whom the applicant has been reporting whereas it is the Home Minister who has signed as reviewing authority. The ACRs for the period 2000-01 is null, void and perfunctory.

23. It is further stated that the acid test for ACR remains objectivity in reporting, however, in the present case it is clear that the impugned ACRs are not based on fair and objective assessment. The grading of the applicant for both the years is unfair and the reports are to be considered as malice ridden,

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especially, if the same are compared to previous reports. Accordingly, it is in the interest of justice that the same should be treated as non-existent on the service record of the applicant.

24. It is further stated that though 'Average' or 'good entries' are not adverse entries and the same may not be communicated. However, in the facts and circumstances of the case when almost all the entries of the applicant have been outstanding as there has been no fall in the standard of the applicant so it was the duty of the authority to inform him this information and the reasons thereof. It is also submitted that applicant could not have been downgraded and no such remarks could have been given and considered for promotion as has in fact been done in the present case and for this purpose the applicant relied upon the judgment in the case of U.P. Jal Nigam case reported in 2 (SCC) 363 1996 AIR SC 1661.

25. It was also stated by the applicant that one fails to understand how the same reporting officer can assess an officer with a consistently outstanding record as 'very good' in one year and 'average' in the immediately succeeding year, without assigning any reasons. Thus it is alleged that the Reporting Officer had some preconceived notion and in order to prepare the ground for giving average entry for the year 2001-02 he firstly graded the applicant as 'Very good' and then for the next year as 'Average', especially in the year when the applicant's review of promotion was to be held, so that

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the applicant could be denied selection and other officials who are close to the corridors of power could be promoted.

26. It is further submitted that the applicant in the ACR of the year 2000-01, the grading has been brought down from outstanding to very good and the next year, i.e., 2001-02 the same has been brought further down from very good to average. That the applicant fails to understand that, if there was any down fall or there were any shortcomings, lapses on the part of the applicant in that event why the additional and important duties of the Secretary were delegated to the applicant so it is prayed that the entries of the ACR be declared as non-est and the respondents should be directed to conduct a review DPC to consider the case of the applicant for promotion to the post of Secretary.

27. The respondents are contesting the OA. The respondents pleaded that the appointment of Senior officers in the Government of India is made from through different sources which are as under:-

- (i) Officers drawn from All India Services
- (ii) Officers drawn from organized Central Services Group 'A'
- (iii) Central Secretariat Service



28. It is further stated that the appointment to the level of Under Secretary and above in the Government of India are governed by the Central Staffing Scheme under which the services of individual officers are borrowed on deputation from their respective cadre authorities and appointment to such posts are made keeping in view the requirements of each post and the qualifications and experience of the officers falling within the field of choice and these posts are filled on tenure deputation basis from amongst officers from any of the three streams.

29. It is further stated that the Central Staffing Scheme has been in operation for over 40 years. It provides a systematic arrangement for the selection and appointment of officers to Senior Administrative Posts at the Centre, excluding the posts which are specifically encadred within the organized Group A services or are filled by recruitment through the UPSC. It is further submitted that appointment to all other posts of the rank of Under Secretary and above in the Government of India are made under the Central Staffing Scheme, by borrowing officers from the All India Services and participating Group 'A' Services, the cardinal principle being that all officers, who are so borrowed, will serve the Government of India for a stipulated tenure on deputation and thereafter return to their parent cadre. Their growth, development and career prospects are mainly in their own service.

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30. The main reason for following this scheme is to meet the Centre's need for fresh inputs at senior levels in policy planning, formulation of policy and implementation of programmes from diverse sources. The services of Scientific and Technical personnel and professionals in the field of economics, statistics, law and medicine are similarly obtained for specified period on deputation and they return to their respective cadres at the end of their tenure.

31. It is further submitted that no posts filled under this Scheme on tenure deputation basis can be deemed to be a cadre post of the Service to which the officers belongs. Similarly no individual officer belonging to a Service participating in the Scheme can claim any right to a post or appointment under the Government of India under the Scheme and different eligibility criteria had been fixed for empanelment for holding posts of the level of Additional Secretary, Secretary etc. and selection for inclusion in the panel of officers adjudged suitable for appointment to the posts of Additional Secretary or Special Secretary/Secretary to the Government of India and posts equivalent thereto, is approved by the Appointments Committee of the Cabinet on the basis of the proposals submitted by the Cabinet Secretary.

32. It is further stated that the seniority of an officer in the Service cadre and the entries earned by him in the ACRs are not the only considerations taken into account to assess the suitability for being empanelled to hold posts at the level of Additional

Secretary/Secretary to the Government of India. Apart from the performance on various assignments held as reflected in the ACRs, the Special Committee of Secretaries goes through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair of participating in the policy making process, which are relevant factors for empanelment of officers at that level. It is further submitted that it is false and misleading on the part of the applicant to conclude that only the grading in the ACR can be the basis for selection. It is further submitted that the case of the applicant had been duly considered on merits and it is not denied that the applicant belong to a particular batch of IAS Service.

33. It is further submitted that the Department of Justice has several officers working in the Ministry but all function under the overall direction and supervision of the Home Secretary/Secretary (Justice), therefore, any significant achievement of the Department of Justice cannot be said to be achievement made by the applicant. It is further submitted that the applicant cannot be allowed to have personal grudge for the normal day-to-day functions for which he was otherwise expected to discharge as Additional Secretary (Justice) under the overall control of the Ministry of Law and Justice.

34. As regards setting up of Fast Track Courts it is submitted that the process for the same had already been initiated before the applicant joined the post as Additional Secretary. As regards Computerisation and Networking of City Courts in the four metros it is

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submitted that in the year 1997 it was done. Similarly networking of department of justice with High Courts and Law Departments it is submitted that the same was done before the applicant had joined the Justice Department as such there is nothing on record to suggest any extra or personal initiative taken by the applicant over and above what he was even otherwise expected to do as Additional Secretary of the Department.

35. It is further submitted that the new scheme for High Court was approved by the Planning Commission in the Tenth Plan and was taken up at the initiative of the Department of Justice and not on the initiative of the applicant himself individually and the same is the case with regard to other projects.

36. It is also submitted that there was some gap between the period when the applicant's predecessor had taken voluntary retirement on 29.11.1999 and the applicant joined as Additional Secretary (Justice) on 9.3.20000. During this period the supervisory charge of the Department of Justice was given to Shri R.D. Kapur, Special Secretary. It was also submitted that when the applicant joined as Additional Secretary/Secretary (Justice) it was decided that the Special Secretary Shri R.D. Kapur would continue to hold superior charge of the Department of Justice and Additional Secretary (Justice) would submit files through him. It is admitted that the applicant's predecessor had been given superior charge of the Judicial Division of Ministry of Home Affairs and the office of the Registrar General and Census Commissioner of India. It is also submitted that when Shri R.D.

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Kapur, Special Secretary relinquished the charge of his post and there was a short gap before his successor was appointed. It was under these circumstances that the orders were issued for the applicant to submit files directly to the Minister except certain specified categories of cases.

37. It is further submitted that the conclusion drawn by the applicant is presumptive and has no basis. It is further submitted that the superior officer is the best judge of the individual performance of an officer and his contribution to the overall performance of the organisation.

38. It is not denied that the representation dated 5.8.2002 was received from the applicant regarding treating the grading given in these ACRs as 'Very Good' and 'Average' as adverse in terms of the ACR Rules. The ACR for the years 2001-02 had been accepted by the Law Minister and the Grading recorded, therefore, would have to be allowed to stand. The remarks of the Recording Officer are also such that they cannot be treated as adverse. Therefore no communication under Rule 8(1) of the said rules would appear to be necessary.

39. It is further submitted that the applicant is admitting unauthorised access to his confidential records and should be directed to explain how he came to know the entries as claimed by him.

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40. As regards selection for inclusion on the panel of officers adjudged suitable for appointment to the post of Secretary to the Government of India and posts equivalent thereto, is approved by the Appointments Committee of the Cabinet (ACC) on the basis of proposals submitted by the Cabinet Secretary. In this task, the Cabinet Secretary is assisted by a Special Committee of Secretaries for drawing up proposals for the consideration of the ACC. Inclusion in such panels is through the process of strict selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy making process. Besides that it is submitted that the posts at this level at the Centre are filled according to the Central Staffing Scheme and are not to be considered as posts for the betterment of promotion prospects of any service. The needs of the Central Government are the paramount consideration. While due regard is given to seniority, filling up of any specific post is based on merit and specific suitability of the officer for a particular vacancy in the Central Government. Hence the CR grading is not the only criterion for appointment to the post.

41. It is also submitted that in case of officers of the level of Supertime scale, there is no provision for 'Self Appraisal' by the officer reported upon, therefore, submission of 'self appraisal' by the applicant to respondent No.3 (Home Secretary) is not relevant.

42. Respondents have also denied that the applicant had an apprehension of being victimized by the Home Secretary, who was a batchmate of applicant's elder

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brother; it is imaginary and without any basis. There is no material to show that there was any such personal animosity between the applicant and the Home Secretary which would impel the former to be hostile to the applicant.

43. It is further submitted that the ACRs have been correctly recorded and since the ACRs are not the only criteria for empanelment to the post of Secretary so the OA should be dismissed.

44. From the pleadings of the parties, following points arise for consideration:-

(i) Whether the ACR of the applicant have been recorded in conformity with the ACR Rules, if not, to what effect;

(ii) whether any review DPC is required to be constituted for considering the case of the applicant by the Selection Committee for the applicant for promotion as Secretary to the Government of India;

(iii) whether the applicant had an improper access to the confidential records, if so to what extent and to what effect.

45. The applicant has submitted that as ACRs for 2 years 2000-01 and 2001-02 have not been properly recorded. In this regard it may be mentioned at the outset that as regards the ACR for the year 2000-01, the respondents had submitted that in case of the applicant

it is the Home Secretary who is the Reporting Authority and Ministry of Law and Justice is the Reviewing/Accepting Authority and since the report for the year 2000-01 is concerned the respondents had submitted that in case of the applicant Home Secretary is the Reporting Authority and Ministry of Law and Justice is the Reviewing/Accepting Authority and since the report for the year 2000-01 was initiated by the Home Secretary and was reviewed by the Home Minister which was not as per the prescribed channel of writing the report so it was decided to treat the remarks recorded by the Home Minister as reviewing authority as non-existent.

46. It is further submitted that as then Minister of Law and Justice had demitted the office, his remarks could not be obtained. A certificate to that effect has been recorded and appended in the ACR Column of the applicant, so the remarks recorded by the reporting authority are now final hence the ACR for that period is valid.

47. The learned counsel appearing for the applicant submitted that as per ACR Rules, Rule 5 requires that Confidential Reports are required to be written for each financial year or calendar year, as may be specified by the Government but the Confidential Reports are required to be written ordinarily within a period of 2 months from the date of submission of the same and since the self assessment report was submitted within time so the same should have been submitted before the reviewing authority when the Minister was in office.

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Rule 6 prescribes for review of the Confidential Report which also gives one month time to the reviewing authority who has to record his remarks within one month.

48. Counsel for the applicant further submitted that the ACR Rules require that the Confidential Report should be written in such form as may be specified by the Central Government. Rule 4 further enjoins that the officer reported upon as well as the reporting reviewing/accepting authorities shall ensure that the portions of the forms which are to be filled in by them are completed by them within the time limit as specified in this behalf by the Central Government. After referring Rule 4 the learned counsel for the applicant further submitted that since the format has been provided under the rules itself so that is a statutory form and part III of the form requires the reporting authority to comment upon the nature and quality of work of the officer who is to be reported upon and then part III further requires that the reporting authority has also to make comments upon the attributes provided in para (B) of the form of Part III and then there are additional attributes as per Part C of Part III of the ACR Form. But in the case of the applicant these mandatory provisions have not been followed.

49. The learned counsel for the applicant then submitted that the attributes of the applicant have not been commented upon. There is no comment about the personality of the applicant nor on any good quality or short comings and particularly the quality of mind, conceptual ability, communication skill, analytical and

planning ability, leadership qualities and initiative etc. Thus the reporting officer had skipped over the various attributes mentioned in Column No. III in the General Assessment of the officer to be reported upon. Thus the same are liable to be declared as non-existent as it fails to observe the mandatory provisions of ACR Rules for writing the ACRs.

50. The counsel for the applicant then also referred to the judgment of the Hon'ble Supreme Court in the case of U.P. Jal Nigam Vs. Prabhat Chandra Jain and Others, reported in 1996 (2) SCC 363 and submitted that when there is an extreme variation in gradation such as 'outstanding' gradation in one year followed by 'satisfactory' in the succeeding year, held, may reflect an adverse element compulsorily communicable and the reason for such a change must be recorded and the employee must be informed of the change in the form of advice. Otherwise the downgrading cannot be sustained.

51. The counsel for the applicant submitted that in this case also throughout the applicant has been outstanding officer and it is for the first time in the year 2000-01 when he was downgraded to very good and in the subsequent year he was further downgraded to average and this has been done with a calculated move and that first the applicant had been downgraded to that of very good and then to the grade of average and when there is such a fall then as per the law laid down in U.P. Jal Nigam (Supra) the applicant should have been conveyed as it has an adverse effect on the career of the applicant. On the same principle the applicant has also relied upon

the judgment given in the case of B.L. Srivastava Vs. the Union of India and Others in OA No.456/2000 dated 16.8.2000 and Donatus Engzanang Vs. State of Mizoram and Others, (CWP No.45/1997) of the Guwahati High Court.

52. We have considered this submission made by the learned counsel for the applicant.

53. Now the question is whether the ACR recorded by the reporting officer and reviewing authority are required to be communicated or not. For this purpose we may mention that Rule 8 of the ACR Rules applicable to the case of the applicant governs the principle of communication of the adverse remarks. Rule 8 provides that where the Confidential Report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire Confidential Report by the Government or such other authority as may be specified by the Government ordinarily within 2 months of the receipt of the CR and a certificate to this effect shall be recorded in the CR. Rule 8(2) further provides that the question whether a particular remarks recorded in the Confidential report of a member of the service is an adverse remark or not shall be decided by the Government. Then explanation to Rule 8 further says that for the purpose of these rules an adverse remark means a remark which indicates the defects or deficiencies in the quality of work or performance or conduct of an officer, but does not include any work or works in the nature of counsel or advice to the officer. So it is in the light of Rule 8 itself it is to be seen whether the remarks recorded by

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the reporting authority or the reviewing authority in the case of the applicant are adverse in nature which are required to be communicated to the applicant. In this regard we may mention that we had called for the ACRs and we have seen that neither the reporting authority nor the reviewing authority had recorded a note to the effect that remark is an 'adverse' remark nor there is any decision by the Government that any particular remark recorded in the ACR of the applicant is an adverse remark so there is no requirement of communication of the ACRs to the applicant. The reliance placed by the applicant on the judgment of U.P. Jal Nigam is a misplaced reliance because in the case of U.P. Jal Nigam the rules pertaining to the ACRs of the employees were different than those which are applicable to the applicant in this case. In the case of the applicant there is a specific provision for communication of adverse remarks and since the remarks recorded in the case of the applicant are not treated as adverse remarks as per the provisions of Rule 8 (2) so these remarks were not required to be communicated to the applicant.

54. The learned counsel for the applicant has also submitted that the CRs are written for the career progression of a member of the service and since the applicant was already working at the level of Additional Secretary and for the progress in his career it was necessary that he should have been communicated the remarks vide which he had been downgraded as it affected his career.

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55. The counsel for the applicant has also pointed out that in the ACRs recorded by the reporting authority, he has not recorded various attributes as required as per Column R-II of the ACR format so on this score also the ACRs should be held to be contrary to the rules and should be declared as non-est.

56,. We have considered the points raised by the counsel for the applicant.

57. As far non-recording of various attributes of the applicant we may mention that column 2 of Part II of the form of ACR pertains to general assessment of the officers who is to be reported upon though by way of illustration of direction it suggests that it should contain in a narrative form an overall assessment of the officer's personality. His good qualities and shortcomings etc. should in particular touch on the following points viz. quality of mind, conceptual ability, communication skill (written and oral), analytical and planning ability, leadership qualities and initiative but the heading of the column is only about general assessment and these attributes have been put in a bracket only so that these things have to be kept in mind while recording the general assessment of the officer who is being reported upon and in this case also though on each trait separate assessment has not been made by the reporting authority yet the assessment made and reported upon in one sentence appears to be quite sufficient so as to comment on all the attributes as it records that "the officer is a knowledgeable and experienced officer whose performance as Additional

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Secretary of the Department of Justice was satisfactory" and in the year 31.3.2001 it has been recorded as "quite knowledgeable, experienced and quite hard working". So this phrase "quite knowledgeable and experienced officer" can be read to cover all the attributes mentioned in the bracket and it was not required at all to mention about each individual trait as given in the bracket under the caption general assessment in Column 2 of Part II of the ACR format.

58. In this regard we may mention the instructions issued along with the ACR form particularly para 5 of the instructions raised that every answer shall be given in narrative form and the space provided indicates the desired length of the answer. It further says that the words and phrases should be chosen carefully and should accurately reflect the intention of the authority recording the answer, so in our view space provided along with column 2 of part II do not indicate that each attribute has to be answered separately rather it confirms the manner in which the same has been written. Hence we find nothing to interfere with the manner in which the ACR has been recorded.

59. Now coming to the question about the communication of the adverse remarks recorded in the ACR Rule 8(2) of the ACR Rules shows that wherever the confidential report of a member of the service contains an adverse remarks, it shall be communicated to him in writing and adverse remark has been explained in the explanation to Appendix Rule 8 which shows that the adverse remarks means a remark which indicates the

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defects or deficiencies in the quality of work or performance or conduct of an officer. The report of the reporting officer which has been accepted by the reviewing authority does not indicate any adverse remarks as attributes in the adverse remarks does not indicate any deficiency in working or performance or conduct of an officer nor is there any decision taken by the Government that the remarks given by the reporting authority and accepted by the reviewing authority are adverse as the Government has not been called upon to decide whether the remarks are adverse or not and it is the proviso to Rule 8(2) which provides for deciding the question whether a particular remark recorded in the ACR of a member is an adverse remark or deemed to be an adverse remark or not and since there is no controversy about the remark made by the reporting authority or reviewing authority so Government has also not decided whether there is any adverse remark or not so on this score also we do not find any interference is required. Hence we are of the considered opinion that the ACR of the applicant had been recorded in conformity with the ACR Rules and since there was no adverse remark as per Explanation to Rule 8(2), so it was not required to be communicated.

60. Though the counsel for the applicant has relied upon the judgment of the U.P.Jal Nigam VS. Prabhat Chandra Jain (Supra) to state that whenever there is a steep fall and an officer falls below the Bench Mark then it has an adverse affect on the career progression of an employee. So examining the question whether the ACRs of the applicant are adverse since he has not been empanelled for the post of Secretary on that ground the

same should be communicated to the applicant before hand or not, we may mention that as regards empanelment for the post of Secretary is concerned, that is not a post on which the applicant has to be promoted under his service rules. Empanelment for the post of Secretary or equivalent post depends upon various other things rather than ACRs. It is governed by the Central Staffing Scheme and sources for empanelment to such posts are various as an officer to be empanelled as Secretary can be one from an All India Service. He can also be an officer drawn from organised Central Services Group 'A' and Central Secretariat Service.

61. The services of Scientific and Technical Personnel and professionals in the field of economics, statistics, law and medicine are similarly obtained for specified periods as per the Central Staffing Scheme. It is the need of the Central Government which has a paramount consideration for empanelment of panel and the officers cannot claim any right to any post or appointment under the Central Staffing Scheme.

62. Central Staffing Scheme further provides that empanelment is to be made by a group of Secretaries under the leadership of Cabinet Secretary who after selecting the names puts up the same before the ACC and while selecting the specific Committee of Secretaries headed by the Cabinet Secretary takes into consideration the qualities of officer on merit, competence, leadership and a flair for participating in the policy making process. Thus the post are filled at this level as per the requirement of the Central Government after evaluation of



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various qualities as prescribed in the Central Staffing Scheme and it is not for the betterment of promotion prospects or the career progression of any service including IAS, though due regard is given to the seniority of members of the IAS.

63. We may further point out that empanelment of the officers at the level of of Secretary is not made merely on the basis of the ACRs though the ACRs are also considered but consideration of ACRs alone is not the criterion. Paragraph 14 of the Central Staffing Scheme make it very clear that the ACR is not the only criterion for empanelment so applicant cannot claim that the reporting in the ACR has been below the Bench mark which should have been conveyed and as such he could not make the grade for empanelment as Secretary.

64. As already stated above, empanelment to the post of Secretary is not a promotional post in the cadre of the applicant. Besides that it is not the ACRs alone which has to be taken into consideration for the purpose of empanelment so applicant cannot say that for these reasons he should have been conveyed the remarks.

65. Since we have held that the ACR of the applicant had been recorded in conformity with the Rule 8(2) as these are not adverse remarks and since there is nothing like

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Bench Mark for the post of empanelment to the post of Secretary so these ACRs were not required to be communicated to the applicant at all.

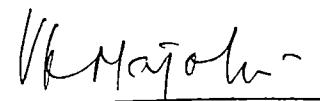
66. As we have already held that the ACRs of the applicant had been recorded in conformity of the rules so ^{with in} ~~constituted~~ review DPC is required to be ~~considered~~ for considering the case of the applicant for being empanelled to the post of Secretary.

67. An issue has been raised by the respondents that ^{applicant here} an improper access to the records. During the course of arguments we had also put a question to the learned counsel for the applicant as to how and in what manner he could have access to the same. The learned counsel for the applicant was unable to explain as to how he could have an access to his ACRs rather the pleading suggests that the applicant has a pride in having access to the ACRs. This attitude of the applicant cannot be appreciated at all and on this ground alone the OA deserves to be dismissed. If a person of the rank of Additional Secretary level can indulge in such like activities to have access to CRs and at the same time he claims for empanelment to the post of Secretary, this ^{act of applicant be} ~~practices~~ cannot be appreciated at all.

68. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(KULDIP SINGH)

MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)